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PATENT APPLICATION

ATTORNEY DOCKET NO. 300202359-2

IN THE  
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Mark Henry BUTLER

Confirmation No.: 6277

Application No.: 10/695,948

Examiner: Ryan J. Jakovac

Filing Date: 10/30/2003

Group Art Unit: 2445

Title: DELIVERY CONTEXT AWARE ACTIVITY ON NETWORKS: DEVICES, SOFTWARE, AND METHODS

Mail Stop Appeal Brief-Patents  
Commissioner For Patents  
PO Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on October 27, 2009.

☒ The fee for filing this Appeal Brief is \$540.00 (37 CFR 41.20).

☐ No Additional Fee Required.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month  
\$130

☐ 2nd Month  
\$490

☐ 3rd Month  
\$1110

☐ 4th Month  
\$1730

☐ The extension fee has already been filed in this application.

☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 540. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

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Respectfully submitted,

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Atty. Dkt. No. 300202359-2  
(084061-0546)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Mark Henry BUTLER  
Title: DELIVERY CONTEXT AWARE ACTIVITY ON NETWORKS:  
DEVICES, SOFTWARE, AND METHODS  
Appl. No.: 10/695,948  
Filing Date: 10/30/2003  
Examiner: Ryan J. Jakovac  
Art Unit: 2445  
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**BRIEF ON APPEAL**

Mail Stop Appeal Brief - Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Under the provisions of 37 C.F.R. § 41.37, this Appeal Brief is being filed together with a deposit account 08-2025 authorization in the amount of \$540.00 covering the 37 C.F.R. 41.20(b)(2) appeal fee. If this fee is deemed to be insufficient, authorization is hereby given to charge any deficiency (or credit any balance) to the undersigned deposit account 08-2025.

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**REAL PARTY IN INTEREST**

The real party in interest in this Appeal is Hewlett-Packard Development Company,  
L.P.

**RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences that will directly affect, be directly affected by, or have a bearing on the present appeal, that are known to Appellant or Appellant's patent representative.

**STATUS OF CLAIMS**

Claims 1-5, 54, 57 and 58 are pending, rejected, and are being appealed, whereby claims 6-10, 12-18, 41-48, 55 and 56 are withdrawn from consideration and are thus not under appeal. Claims 11, 19-40 and 49-53 have been previously canceled.

Claims 1-5, 57 and 58 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0032754 to Longston et al. in view of Windows NT Server.

Claim 54 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0032754 to Longston et al. in view of Windows NT Server and further in view of Applicant's Admitted Prior Art ("AAPA").

The claims that are being appealed in their current condition are attached hereto in the Appendix.

**STATUS OF AMENDMENTS**

No claims have been amended in the present application subsequent to the receipt of the Final Office Action dated August 5, 2009 ("Final Office Action").

**SUMMARY OF CLAIMED SUBJECT MATTER**

Independent Claim 1: The present invention, as described in independent claim 1 of the present application, comprises a networkable resource server (see, *e.g.*, servers 14', 18' or 20' shown in Figure 2 of the drawings, and page 24, lines 1-14 of the specification) adapted in use to serve out resources to client devices of a network (see, *e.g.*, page 24, lines 1-14 and page 31, lines 1-17 of the specification), the server having delivery context aware activity software (see, *e.g.*, page 32, line 27 to page 33, line 2, and page 34, lines 23-30 of the specification) which when run on a processor of the server causes a report to be produced containing data related to delivery context aware requests (see, *e.g.*, page 24, lines 23-29 of the specification, and Figure 2 of the drawings), received by the server, for resources (see, *e.g.*, page 24, lines 1-14 of the specification, and Figure 2 of the drawings), wherein the report includes information concerning characteristics of the server (see, *e.g.*, page 28, line 17 of the specification), network characteristics linking the server and the client devices (see, *e.g.*, page 28, lines 19-20 of the specification), characteristics of the client devices (see, *e.g.*, page 28, line 22 of the specification), and characteristics of any intermediary devices in a network path between the client devices and the server (see, *e.g.*, page 28, line 24-25 of the specification), wherein the report is sent out periodically to a master monitoring processor (see, *e.g.*, page 24, lines 23-29 of the specification), to thereby notify the master monitoring processor of context delivery related information that has changed since the master monitoring processor was last updated (see, *e.g.*, page 24, lines 23-29 of the specification).

Dependent Claim 57: The present invention, as described in dependent claim 57 of the present application, recites that the report is sent out periodically to the master monitoring processor at a fixed update frequency (see, *e.g.*, page 24, lines 28-29 of the specification).

Dependent Claim 58: The present invention, as described in dependent claim 58 of the present application, recites that the report includes information as to a fraction of client devices that are currently seeking resources from the server that use profile differences (see, *e.g.*, page 29, lines 27-28 of the specification).

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

A first ground of rejection to be reviewed on appeal is the Examiner's rejection of claims 1-5, 57 and 58 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0032754 to Longston et al. in view of Windows NT Server.

A second ground of rejection to be reviewed on appeal is the Examiner's rejection of claim 54 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0032754 to Longston et al. in view of Windows NT Server and further in view of Applicant's Admitted Prior Art ("AAPA").



## **ARGUMENT**

### **I. Rejection of Claims 1-5, 57 and 58**

Appellant respectfully requests that the rejection of claims 1-5, 57 and 58 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0032754 to Longston et al. in view of Windows NT Server be reversed and withdrawn for at least the reasons set forth below.

#### **a. Legal Standard**

The Federal Circuit has outlined the burden on the PTO as follows<sup>1</sup>:

In rejecting claims under 35 U.S.C. 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. *Id.* “A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.” *In re Bell*, 991 F.2d 781, 782, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051, 189 U.S.P.Q. 143, 147 (CCPA 1976)). If the examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some reasonable suggestion or motivation to modify the prior art reference or to combine reference teachings. Second, there must be a reasonable expectation of success of achieving the desired goals. Third, the prior art references when combined must teach all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be gleaned from the prior art, and not based on the Applicant’s disclosure.<sup>2</sup>

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<sup>1</sup> *In re Rijckaert*, 9 F.3d 1531, 1532, (Fed. Cir. 1993)

<sup>2</sup> *In re Vacek*, 947 F.2d 488 (Fed. Cir. 1991).

**b. Claims 1-5**

In the case of Independent Claim 1, Appellant respectfully submits that a *prima facie* case of obviousness has not been established because Longston et al. and Windows NT Server fail to teach or suggest all of the claim elements recited in claim 1.

**i. 'Report' Features Not Taught or Suggested in Prior Art**

The final Office Action asserts that Windows NT Server teaches that *a report includes information concerning characteristics of the server, network characteristics linking the server and the client devices, characteristics of the client devices, and characteristics of any intermediary devices in a network path between the client devices and the server.* Appellant respectfully disagrees with this assertion made in the final Office Action.

Namely, Windows NT Server describes an application that allows a user to act as an administrator, whereby the user can check: a) logon and logoff connections, b) file and object access, c) use of user rights, d) user and group management changes, e) security policy changes, f) restart, shutdown and system logs, and g) process tracking. See pages 404 and 405 of Windows NT Server. None of this information that a user can obtain using Windows NT Server is related to characteristics of intermediary devices in a network path between a client device and a server, as explicitly recited in claim 1. Rather, Windows NT Server appears to be directed to things done at a particular device, and is not concerned with providing information to a user concerning network characteristics linking server and client devices, nor does it provide any information concerning intermediary devices in a network path.

Pages 980-985 of Windows NT Server discloses monitoring and logging of disk performance, but this is device-related, and is not directed to network path information.

Accordingly, for at least the reasons given above, independent claim 1, as well as its dependent claims 2-5 patentably distinguish over the cited art of record.

**ii. 'Sending out of Report Periodically is Not Taught or Suggested in Prior Art**

Further to the arguments provided above, the sending out of a report periodically to a master monitoring processor, to thereby notify the master monitoring processor of context

delivery related information that has changed since the master monitoring processor was last updated, are features not disclosed, taught or suggested by Windows NT Server, contrary to the assertions made in the final Office Action. Namely, the fact that updated reports are generated and viewed, whereby the updated reports are distinguished by time, date and category, says nothing about **periodically notifying** a master monitoring processor of context delivery related information that has changed since the master monitoring processor was last updated. The capability of sending out updated reports, as taught by Windows NT Server, is clearly an ad hoc thing that is not something that is periodically sent out on a fixed schedule (e.g., every hour on the hour).

The final Office Actions refers to pages 409 – 411 of Windows NT Server in particular, but this portion of Windows NT Server merely describes that a user can view a system log of events, whereby the system log of events, as shown in Figure 9.73 of Windows NT Server, does not provide periodic notification to a master monitoring processor, but rather it provides notification “ad hoc”; that is, as soon as the event happens.

Accordingly, independent claim 1, as well as its dependent claims 2-5, patentably distinguish over the cited art of record for this additional reason.

**c. Dependent Claim 57:**

Dependent claim 57 recites that *the report is sent out periodically to the master monitoring processor at a fixed update frequency*. In its rejection of dependent claim 57, the final Office Action asserts that the periodically sending of a report to the master monitoring processor at a fixed update frequency amounts to applying a known technique to a known device. However, since Windows NT Server does not teach or suggest providing reports periodically, and certainly it does not teach or suggest sending out reports at a fixed updated frequency (e.g., every hour on the hour), claim 57 patentably distinguishes over the cited art of record for this additional reason, beyond the reasons given above for its base claim 5.

**d. Dependent Claim 58:**

Dependent claim 58 recites that the report includes information as to a fraction of client devices that are currently seeking resources from the server that use profile difference.

In its rejection of claim 58, the final Office Action asserts that the features recited in this claim "are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited", and thus this claim is not given any patentable weight.

In reply, claim 58 recites features of a report of a server, whereby claim 58 depends from "server" claim 1, and is not a method claim (nor is it a step of a method claim). Thus, the features of the report itself must be given patentable weight, which was not done in the final Office Action, whereby such features are not taught or suggested by the cited art of record.

### CONCLUSION

For the reasons discussed above, Appellant respectfully submits that all pending claims are in condition for allowance, and respectfully requests that the rejections be reversed, and that the pending claims be allowed to issue.

Respectfully submitted,

Date October 27, 2009

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### CLAIMS APPENDIX

1. A networkable resource server adapted in use to serve out resources to client devices of a network, the server having delivery context aware activity software which when run on a processor of the server causes a report to be produced containing data related to delivery context aware requests, received by the server, for resources,

wherein the report includes information concerning characteristics of the server, network characteristics linking the server and the client devices, characteristics of the client devices, and characteristics of any intermediary devices in a network path between the client devices and the server,

wherein the report is sent out periodically to a master monitoring processor, to thereby notify the master monitoring processor of context delivery related information that has changed since the master monitoring processor was last updated.

2. A server according to claim 1 adapted to transmit the report externally of the server to another processor.

3. A server according to claim 1 in which there is provided a data log held in a data log memory, the data log being adapted to store data on activity of the server, including information on delivery context aware activity, and wherein the delivery context aware activity software is adapted to interrogate the data log to obtain the data related to delivery context aware requests for resources received by the server.

4. A server according to claim 1 adapted proactively to send out said report onto the network to which the server is connected.

5. A server according to claim 1 wherein the report relates to a plurality of context delivery aware requests for resources.

54. A server according to claim 1, wherein the server further comprises a profile resolver which receives from at least one of the clients details of a profile difference, and details of a reference profile related to the at least one of the clients, and which references a cache memory to create a profile of the at least one client device using a profile-diff transmitted to the server by the at least one client device and the reference profile retrieved from the cache memory.

57. A server according to claim 1, wherein the report is sent out periodically to the master monitoring processor at a fixed update frequency.

58. A server according to claim 1, wherein the report includes information as to a fraction of client devices that are currently seeking resources from the server that use profile differences.

**EVIDENCE APPENDIX**

None.

**RELATED PROCEEDINGS APPENDIX**

None.